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SUPREME COURT OF THE UNITED STATES

VIRGINIA MILITARY INSTITUTE ET AL. v. UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 92-1213. Decided May 24, 1993

The petition for a writ of certiorari is denied.

Opinion of JUSTICE SCALIA respecting the denial of the
petition for writ of certiorari.

Whether it is constitutional for a State to have a men-only military school is an issue that should receive the attention of this Court before, rather than after, a national institution as venerable as the Virginia Military Institute is compelled to transform itself. This present petition, however, seeks our intervention before the litigation below has come to final judgment. The Court of Appeals vacated the judgment that had been entered in favor of petitioners, and remanded the case to the District Court for determination of an appropriate remedy. It expressly declined to rule on the "specific remedial course that the Commonwealth should or must follow hereafter," and suggested permissible remedies other than compelling the Virginia Military Institute to abandon its current admissions policy. *United States v. Virginia*, 976 F. 2d 890, 900 (CA4 1992).

We generally await final judgment in the lower courts before exercising our certiorari jurisdiction. See, e.g., *American Construction Co. v. Jacksonville, T & K. W. R. Co.*, 148 U. S. 372, 384 (1893); *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R. Co.*, 389 U. S. 327, 328 (1967) (*per curiam*); see generally R. Stern, E. Gressman, & S. Shapiro, *Supreme Court Practice* §4.18, pp. 224-226 (6th ed. 1986). I think it prudent to take that course here. Our action does not, of course,

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preclude VMI from raising the same issues in a later petition, after final judgment has been rendered. See, e.g., *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U. S. 251, 257-259 (1916); *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U. S. 363, 365-366, n. 1 (1973); Stern, Gressman, & Shapiro, *supra*, § 4.18, at 226; 17 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4036, p. 32 (2d ed. 1988).

JUSTICE THOMAS took no part in the consideration or decision of this petition.